

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:06cr20-8
(Judge Keeley)

DWAYNE ANDERSON,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

On March 2, 2007, the Court imposed a sentence of 292 months of imprisonment on Count One and 240 months of imprisonment on Count Thirteen, to be served concurrently, on the defendant, Dwayne Anderson ("Anderson"). On March 13, 2007, Anderson filed a Notice of Appeal with the Court. Over five months later, on August 23, 2007, Anderson filed a "motion for relief from judgment pursuant to [F]ederal [R]ule of Civil Procedure 60(b)(4)."

Because the Federal Rules of Civil Procedure govern only the procedure in suits of a civil nature, Rule 60 does not provide a vehicle through which Anderson may challenge his criminal judgment. Fed. R. Civ. P. 1; United States v. Fair, 326 F.3d 1317, 1318 (11th Cir. 2003); United States v. O'Keefe, 169 F.3d 281, 289 (5th Cir. 1999). Although courts often obtain consent from petitioners to construe their Rule 60 motions as motions to vacate sentence pursuant to 28 U.S.C. §2255, Anderson expressly requested that the Court not construe his motion as a habeas corpus petition under 28 U.S.C. § 2255. Moreover, Anderson currently has a direct appeal

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pending with the Fourth Circuit Court of Appeals, and, therefore, any § 2255 motion filed by Anderson would be dismissed as premature. Walker v. Connor, 72 Fed.Appx. 3 (4th Cir. 2003).

Therefore, because Anderson cannot seek relief from his criminal judgment under Fed. R. Civ. P. 60(b), the Court **DENIES** his motion (dkt no. 550).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: August 24, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE